IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

CRL.A.No. 1969 of 2006()

STC.2187/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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APPELLANT: COMPLAINANT:

K. NOUSHAD, S/O. HAMMED,
KANDIKKAL HOUSE, PALLISSERY, THALASSERY, KANNUR.

BY ADVS. SRI.C.K.PRASAD
SRI.P.A.NOOR MUHAMMED
SRI.E.C.BINEESH

RESPONDENTS: STATE AND ACCUSED 1:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. V. ABDUL RASHEED,
VALIYEDATHU VAZHACHALIL, NEAR MEETHELEPEEDIKA
BUS STOP, DHASMADAVIN, KANNUR DIST.

BY ADV. SRI.P.SANJAY-R2
SRI.M.MUHAMMED SHAFI
PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED -R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.1969 OF 2006

Dated this the 1st day of August, 2007

JUDGMENT

This appeal is filed against the judgment in S.T.C. No.2187 of 2004 on the file of the Judicial First Class Magistrate's Court, Thalassery. By the impugned judgment, the trial court acquitted the accused under Section 256 (1) Cr.P.C.

2. The impugned order would show that the accused - second respondent herein was acquitted for the reason that the complainant - appellant was not present before the court below on the date of posting of the case for giving evidence. Though the dates of adjournments are mentioned in the order, the order sheet produced by the appellant would show that on the said dates of posting of the case, there was no sitting. However, on certain days of posting, the appellant was absent, but his absence was represented except on 23.7.2005, the date of the impugned judgment. The order sheet would also show that the accused - second respondent did not appear before the court below on summons and

coercive steps were taken against him and finally he was arrested on 16.12.2004 by issuing non-bailable warrant. Thereafter the case was posted on two occasions for evidence, but there was no sitting on those two days. The learned Magistrate found that the appellant was not interested in prosecuting the case. The said finding is not correct. The appellant had taken steps to produce the accused before the court below. That apart, the impugned judgment would not show that the court below could not proceed with the case only because of the absence of the complainant.

3. The impugned judgment is not legally sustainable in the light of the principles laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006(3) K.L.T. 825**. In the above judgments, this Court had categorically held that mechanical order under Section 256(1) Cr.P.C. without applying judicial mind is illegal and not justifiable. The Apex Court had also taken the same view in the decision reported in **Associated Cement Co. Ltd. v. Keshvanand, 1998(1) K.L.T. 179 (SC).** In the above circumstances, this Court is of the view that the impugned judgment is liable to be set aside.

4. It is seen that inspite of the acquittal of the accused due to the absence of the appellant, there was a delay of 156 days in filing the petition for special leave to appeal. Hence, the matter can be remanded only on terms. The impugned judgment is accordingly set aside and the matter is remanded to the trial court for fresh disposal from the stage at which the impugned judgment was passed on condition that the appellant pays an amount of Rs.3000/- as costs to the counsel appearing for the second respondent within one month from the date of appearance before the court below.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 7.9.2007.

(K.THANKAPPAN, JUDGE)

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